

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

COY PHELPS,

Plaintiff,

v.

DAVID WINN, et al.

Defendants.

---

Civ. No. 05-CV-40003-GAO

**DEFENDANTS' MOTION FOR A STAY OF DISCOVERY**

Defendants David Winn, B. Potolicchio, and H. Haas (collectively, the “Defendants”), through their undersigned counsel, hereby move to stay all discovery in this action because Plaintiff Coy Phelps (“Plaintiff”) has failed to satisfy the requirements of Federal Rule of Civil Procedure (“Rule”) 26 prior to seeking discovery. Rule 26(d) states that “a party may not seek discovery from any source before the parties have conferred as required under Rule 26(f).” In this case, not only have the parties not met and conferred pursuant to Rule 26(f), but the Defendants must still file their answer and neither party has made initial disclosures pursuant to Rule 26(a). However, despite failing to meet the requirements of Rule 26, Plaintiff served Defendants with discovery requests on November 4, 2007.<sup>1</sup>

Furthermore, seeking discovery at this point in the action is premature because

---

<sup>1</sup> On November 4, 2007, Plaintiff served Defendants with a document titled “First Request for Discovery.” Plaintiff’s “First Request for Discovery” includes forty-one (41) requests that appear to include both interrogatories (pursuant to Rule 33) and requests for production (pursuant to Rule 34). Notably, the “First Request for Discovery” does not indicate which of the forty-one (41) discovery requests constitute interrogatories, and which constitute requests for production.

Defendants likely will move for summary judgment prior to the parties meeting and conferring pursuant to Rule 26(f).

WHEREFORE, for all of the foregoing reasons, the Defendants respectfully request that the Court stay all discovery in this action until the requirements of Rule 26 have been satisfied.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Sonya A. Rao  
SONYA A. RAO  
Assistant U.S. Attorney  
John J. Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100

Date: November 14, 2007

**CERTIFICATE PURSUANT TO LR. 7.1(A)(2)**

The Defendants take the position that, because LR. 7.1(A)(2) requires “counsel” to confer, the Rule is inapplicable where, as here, Plaintiff is proceeding pro se and is incarcerated. To the extent the Court considers the Rule applicable, the undersigned requests that it be waived here.

By: /s/ Sonya A. Rao  
SONYA A. RAO  
Assistant U.S. Attorney  
John J. Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100

Date: November 14, 2007

**CERTIFICATE OF SERVICE**

I certify that, on November 14, 2007, I caused a copy of the foregoing **DEFENDANTS’ MOTION FOR A STAY OF DISCOVERY** to be served, via first class mail, postage pre-paid, on the following pro se Plaintiff:

Coy Phelps, #78872-011  
FMC Devens  
P. O. Box 879  
Ayer, Massachusetts 01432.

By: /s/ Sonya A. Rao  
SONYA A. RAO  
Assistant U.S. Attorney  
John J. Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100

Date: November 14, 2007